

REMARKS

I. Claim Rejections Based on 35 U.S.C. §102(e)

The Examiner has rejected Claims 14-16 and 18-21 under 35 U.S.C. §102(e) as being anticipated by Wong et al (U.S. 7,004,961).

Applicant notes the amendment of independent Claims 14 and 16, one of which supports each of the remaining claims that are the subject of this rejection. Specifically, the claims have been amended to recite that in the performance of the step of inserting the catheter into a subdural space, it is necessary to do so “without penetrating the brain.” Support for this Amendment may be found in the Specification. See, e.g., Figures 1D, 2-4, and 7A-B.

The temperature control device of Wong is consistently illustrated and described as including a step of penetrating the brain, so that a terminal portion extends into a brain cavity. See, e.g., Figures 2, 4, 8; Col. 8, lines 24-26 (“As illustrated in Fig. 2, the stylet 14 is inserted into the conduit 12 and a distal end 24 of the conduit 12 penetrates brain tissue 60”). Moreover, Wong discloses a device and method for temperature control and, more specifically, for central nervous system cooling. See, e.g., Col. 3, lines 9-11 (“Apparatus of the present invention is used to prevent neurological damage by selective central nervous system (brain and/or spinal cord) cooling.”) Its references to “drainage” concern a drainage of CSF, rather than drainage of an accumulation of blood in the subdural space as would occur with treatment of a subdural hematoma. See, e.g., Col. 4, lines 14-15 (“The purpose of catheters C, D, E, and F is to circulate CSF within the brain.”) Wong does not disclose a use of its device for treating a subdural hematoma and, because it involves penetration of the brain, would not be suitable for this purpose. Applicant respectfully submits that it is only with the benefit of hindsight that the device of Wong can be re-engineered to be suitable for use in treating a subdural hematoma, and that such use of hindsight is improper.

II. Claim Rejections Based on 35 U.S.C. §103

A. Claims 17 and 22-25

The Examiner has rejected Claims 17 and 22-25 under 35 U.S.C. §103(a) as being unpatentable over Wong et al.

Applicant notes the dependency of Claim 17 on independent Claim 16 and of Claim 22 on independent Claim 14 -- both of which were discussed above. Applicant asserts the patentability of Claims 17 and 22 over Wong, for the same reasons discussed above with respect to independent Claims 14 and 16.

Claims 23-25 are independent claims. Each has been amended to recite that insertion of the catheter and, in the case of Claims 23 and 24, of the tuohy needle, occurs without penetration of the brain. As noted above, Wong teaches a method and device that requires penetration of the brain and that is concerned with temperature control rather than treatment of a subdural hematoma. In addition, with respect to the tuohy needle element of Claims 23 and 24, this language has been amended to recite that the needle has a "curved tip," which aids in avoiding penetration of the brain. See Specification, p. 10, lines 23-25 ("A tuohy needle (shown in Figure2) has a curved tip in order to prevent penetration of the brain 120.") The Office Action treats the conduit 12 of Wong as a needle; however, Applicant notes that the conduit 12 has a straight tip and, indeed, is intended to penetrate the brain.

B. Claims 26 and 27

The Examiner has rejected Claims 26 and 27 under 35 U.S.C. §103(a) as being unpatentable over Wong et al. and further in view of Dardik. Applicant notes the dependency of

these claims on independent Claim 14 - discussed above. Applicant asserts the patentability of Claims 26 and 27 for the same reasons discussed above with respect to independent Claim 14.

C. Claim 11

The Examiner has rejected Claim 11 under 35 U.S.C. §103(a) as being unpatentable over Wong et al. in view of Lanard et al. Applicant notes the amendment of Claim 11 to more clearly distinguish over the structure of the Lanard reference, as shown in Figures 6-8 thereof. More specifically, and consistent with the Specification, including for example Figure 6B, Applicant has amended Claim 11 to recite that the plurality of “fluid-carrying tubes” extend “laterally” through the drainage channel, and thus support the irrigation channel within the drainage channel and deliver irrigant from the irrigation channel laterally through the drainage channel.

This feature is not shown in Lanard. As shown, for example in the Figure 8 that is reproduced at Page 6 of the Office Action, there is no lateral extending tube from inlet conduit 56 through outlet conduits 60. Instead, these outlet conduits 60 are simply “provided around a portion of the outer circumference of the inlet conduit 56.” Col. 6, lines 50-53.

III. Conclusion

Applicant respectfully submits that this Amendment Letter, in view of the Remarks offered herein, is fully responsive to all aspects of the objections and rejections tendered by the examiner in the Final Office Action. For all the foregoing reasons, the Applicant respectfully requests the issuance of a Notice of Allowance with respect to pending Claims 11 and 14-27.

If there are any additional fees incurred by this Amendment, including any Claim and/or Extension fees, please deduct them from our Deposit Account No. 23-0830.

Respectfully submitted,

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